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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

FILE: [REDACTED] Office: Chicago

Date: JAN 29 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Naturalization under Section 322 of the
Immigration and Nationality Act, 8 U.S.C. § 1433

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on September 20, 1979, in India. The applicant's father, [REDACTED] was born in India in July 1948, and became a naturalized U.S. citizen on January 19, 1988. The applicant's mother, [REDACTED] was born in India in June 1951, and never had a claim to United States citizenship. The applicant's parents married each other on December 7, 1972. The applicant was lawfully admitted for permanent residence on July 12, 1982. The applicant is seeking to become a naturalized citizen under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director reviewed the record and concluded that the applicant was over the age of 18 years and denied the application accordingly.

On appeal, the applicant states that he filed the application before his 18th birthday but the Service took too long to process it.

Section 322 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 21 years old on February 27, 2001. Therefore, the applicant is ineligible for benefits under the CCA.

Section 322 of the Act in effect prior to February, 27, 2001, provided, in part, that:

(a) A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General that the following conditions have been fulfilled:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The child is physically present in the United States pursuant to a lawful admission.

(3) The child is under the age of 18 years and in the legal custody of the citizen parent.

(4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a

child under subparagraph (E) or (F) of section 101(b)(1).

(5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years-

(A) The child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

(B) A citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years.

(b) Upon approval of the application (which may be filed abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

Former 8 C.F.R. § 322.2(a) provided that to be eligible for naturalization under section 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:

(1) Be unmarried and under 8 years of age, both at the time of application and at the time of admission to citizenship;

(2) Reside permanently in the United States, in the physical and legal custody of the applying citizen parent, pursuant to a lawful admission;

(3) Comply with other requirements for naturalization as provided in the Act....

The application was filed on September 9, 1997, when the applicant was 17 years, 11 months and 9 days old (11 days from his 18th birthday). The Service was unable to process the application and render the oath of allegiance in the short period of time prior to the applicant's 18th birthday. Therefore, the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over his residence.

ORDER: The appeal is dismissed:

